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No. 80-2106

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

GENERAL ATOMIC COMPANY,
Petitioner,

v.

UNITED NUCLEAR CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeal of the State of California for the Fourth Appellate District, Division One

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PETITIONER'S REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES i

CONCLUSION 10

TABLE OF AUTHORITIES

CASES:

Bainbridge v. *Merchants & Miners Co.*, 287 U.S. 278 (1932) 7

Beck v. *West Coast Life Insurance Co.*, 38 Cal. 2d 643, 241 P.2d 544 (1952) 7

Federated Department Stores, Inc. v. *Moitie*, No. 79-1517, 49 U.S.L.W. 4687 (decided June 15, 1981) .. 8

General Atomic Co. v. *Felter*, 434 U.S. 12 (1977) 5, 8

General Atomic Co. v. *Felter*, 436 U.S. 493 (1978) 5, 8

General Atomic Co. v. *United Nuclear Corp.*, No. 79-190, 444 U.S. 911 (1979) 9

General Atomic Co. v. *United Nuclear Corp.*, No. 80-1360, 101 S.Ct. 1966 (1981) 9

Gordon v. *Longest*, 41 U.S. (16 Pet.) 97 (1842) 8

Hughes Tool Co. v. *Trans World Airlines*, 409 U.S. 363 (1973) 10

Kalb v. *Feuerstein*, 308 U.S. 433 (1940) 8

Maryland v. *Baltimore Radio Show, Inc.*, 338 U.S. 912 (1950) 10

Prima Paint Corp. v. *Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967) 4

Sibley v. *Tandy Corp.*, 543 F.2d 540 (5th Cir. 1976), *rehearing denied*, 547 F.2d 286 (1977), *cert. denied*, 434 U.S. 824 (1977) 8

Table of Authorities (Continued)

Page

South East Atlantic Shipping, Ltd. v. *Garnac Grain Co.*, 356 F.2d 189 (2d Cir. 1966) 2

Telephone Workers Union Local 827 v. *New Jersey Bell Telephone Co.*, 450 F.Supp. 284 (D.N.J. 1977) 5

Telephone Workers Union Local 827 v. *New Jersey Bell Telephone Co.*, 584 F.2d 31 (3d Cir. 1978) .. 5

United Steelworkers of America v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960) 5

STATUTES:

Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.* (1976) . *passim*

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PETITIONER'S REPLY BRIEF

Rather than address the Questions Presented in GAC's Petition for a Writ of Certiorari, UNC formulates its own legal questions and then urges that the issues which it has articulated do not warrant this Court's review. UNC's stated issues are, in fact, wide of the mark and they ignore several critical phases of this litigation which give rise to serious and important questions of federal statutory and constitutional law.

This is a case arising under the Federal Arbitration Act, and it involves rights to the confirmation of an award entered pursuant to that federal statute. The award was the outcome of an arbitration guaranteed by federal law which had been unconstitutionally delayed for two years because of orders issued by the New Mexico courts which violated the Supremacy Clause of the United States Constitution. Consequently, GAC also invokes rights under the Supremacy Clause. GAC maintains that the Federal Arbitration Act is violated if a court which has the duty under federal law to enforce an arbitration award abdicates its responsibility or if it cavalierly disregards the legal conclusions of the arbitrators.

Endeavoring to prevent GAC's requested arbitration, UNC has claimed that the Full Faith and Credit Clause of the United States Constitution bars any proceeding which might conflict with judgments of the New Mexico courts. UNC's legal claim that the New Mexico judgments are entitled to full faith and credit was briefed, argued and properly submitted to arbitration by both parties after a federal court had held that the issue could and should be heard by the arbitrators. The arbitrators issued an award finally and definitely rejecting UNC's full-faith-and-credit argument. The Federal Arbitration Act gives GAC the right to obtain confirmation of that decision in the State court of general jurisdiction where the award was "made"—*i.e.*, in San Diego, California, where the arbitration was held and the award was filed. Section 10 of the Act prescribes the judicial review standards to be applied in such a confirmation proceeding. The California Court of Appeal was not permitted to undertake a *de novo* review of a legal issue which two federal district judges held to be arbitrable under the terms of the parties' arbitration agreement, which both parties had fully submitted to arbitration (with UNC in-

sisting that the arbitrators had "jurisdiction" and "power" to decide), and which the arbitrators had resolved in a well-reasoned arbitration award.

GAC does *not* claim—and has *never* claimed—that the California Court of Appeal "violated the Full Faith and Credit Clause of the U.S. Constitution" (UNC Brief in Opposition, p. i; *see also id.* at p. 15) by ordering dismissal of GAC's confirmation proceeding. It is UNC which has raised the Full Faith and Credit Clause to bar federal arbitration. And GAC contends that if, in the guise of enforcing a New Mexico judgment, a California court abdicates or repudiates duties assigned to it by the Federal Arbitration Act, federal law, including both the Supremacy Clause and the Federal Arbitration Act, have been violated.

That is this case. Despite its lengthy history,[1] it presents four important and relatively straightforward questions:

(1) *Does the Federal Arbitration Act permit a State court to deny personal jurisdiction over the losing party to a federal arbitration held and decided within that State?* The language of the Federal Arbitration Act and the reported cases compel the conclusion that, as a matter of federal law, there *is* personal jurisdiction in San Diego over the parties to this arbitration. The decision of the California Court of Appeal denying the jurisdiction of the California courts violated federal law by denying GAC the judicial forum for confirmation which is prescribed by the federal statute. UNC's only response is that the established law cited in our Petition is irrelevant because in this case (1) GAC's right to arbitration disappeared after December 27, 1977 (when a Santa Fe court declared that GAC had "waived" arbitration) and (2) the arbitration agreement no longer "existed" after April 4, 1978 (when the same court declared that because of GAC's default in discovery the supply agreement between GAC and UNC

[1] It is established federal law that courts are bound by factual findings made by arbitration panels. *South East Atlantic Shipping, Ltd.* v. *Garnac Grain Co.*, 356 F.2d 189, 191-92 (2d Cir. 1966). It is thus extraordinary that UNC devotes the majority of its Brief in Opposition to factual assertions, many of which are directly at odds with facts found by the arbitrators in this case.

containing the arbitration agreement was null and void). UNC Brief in Opposition, pp. 19-20.

But that very same argument—characterized throughout these papers as "UNC's full-faith-and-credit issue"—was submitted by UNC to the arbitration panel after a federal judge had ruled that the arbitration was an appropriate forum in which to present and decide UNC's full-faith-and-credit issue. The arbitrators received briefs, heard three days of argument in San Diego, and the majority reached a result which was meticulously explained in its Partial Award filed in San Diego (Pet. App. 25a-54a). The validity of that award may be tested under the standards of the Federal Arbitration Act in a court to which jurisdiction has been assigned. But it totally defeats the federal remedy created by Congress more than half a century ago if, instead of measuring the award by the statutory standards, a State court denies that it has personal jurisdiction because it assumes a legal conclusion which UNC unsuccessfully attempted to sell to the arbitrators.

(2) *Does the Federal Arbitration Act permit a State court to override, without a word of explanation, conclusions of law determined by arbitrators after those issues had been fully briefed and presented to them?* The decided cases hold unequivocally that questions of law—even those relating to allegations of fraud in securing a contract—come within the province of the arbitrators under a broad arbitration clause.

On November 14, 1979, Justice Schaefer and Mr. Wirtz reached the following conclusion regarding the New Mexico judgments of December 1977 and April 1978 in their Partial Award (Pet. App. 47a):

> It is the Panel's determination that all proceedings in the Santa Fe court following the entry of its illegal injunction restraining GAC from exercising its contractual right to arbitrate were coram non judice and that no subsequent proceedings in that court or elsewhere reinvested that court with jurisdiction over the controversy which is the subject of this arbitration. Those subsequent proceedings are therefore not res judicata and they are not entitled to full faith and credit.

That conclusion followed several pages of careful reasoned analysis of governing federal precedent and of the decisions of this Court in *Felter I* and *Felter II*. Under Sections 9 and 10 of the Federal Arbitration Act and the applicable precedents, the arbitration panel's legal conclusion could be set aside by a reviewing court only on grounds such as corruption, evident partiality, misconduct or abuse of power. The California Court of Appeal found none of these. It cited and discussed *no* federal statute and *no* federal cases. Its disagreement with the arbitrators' decision was stated and explained, in full, as follows (Pet. App. 1a-2a; citations omitted):

> The court finds no jurisdictional basis in the San Diego Superior Court for this action to confirm an arbitration award, because a competent court, the Supreme Court of New Mexico, has held the agreement to arbitrate is void,[3] and its decisions are entitled to full faith and credit.

Once again, UNC cannot dispute the general rule regarding judicial review of arbitrators' decisions set forth in our petition. Nor does it contend that the action of the Court of Appeal constituted appropriate judicial review under the standards of the Federal Arbitration Act. Instead, UNC argues that the law concerning "the scope of review of arbitration awards" is inapplicable because the Court of Appeal held that the California courts lacked "jurisdiction."

This is, again, circular reasoning. The alleged lack of "jurisdiction" of the California courts rests entirely on the Court of Appeal's unlawful repudiation of the legal conclusion of the arbitration panel on a legal issue submitted to it by UNC. If, as the arbitrators found, the Santa Fe default judgment declaring the UNC-GAC supply agreement null and void is *not*

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[3] The California Court of Appeal erred in this assertion. The New Mexico courts had not voided the "agreement to arbitrate" but had, rather, invalidated the supply agreement which contained the arbitration clause. This Court has firmly established the rule that whereas issues pertaining to the making of the arbitration clause must be judicially determined, questions pertaining to the contract in which the clause is contained (such as fraud in the inducement of such a contract) are, under a broad arbitration clause, remitted to the arbitrators. *See Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967). The making of the arbitration agreement itself has never been challenged by UNC.

entitled to full faith and credit, there was no infirmity—"jurisdictional" or otherwise—in the arbitration. It was then the obligation of the California courts under federal law to entertain and decide GAC's motion to confirm the arbitration award and to apply the standards of Section 10 of the Federal Arbitration Act in arriving at that judgment. That is what the trial court was prepared to do until the Court of Appeal intervened.

The decision in *Telephone Workers Union Local 827* v. *New Jersey Bell Telephone Co.*, 584 F.2d 31 (3d Cir. 1978), from which UNC quotes in its Brief in Opposition (p. 21), is entirely consistent with this position. In the *Telephone Workers* case the arbitrator was not asked and did not undertake to rule on the *res judicata* effect of a judicial consent decree which, according to the employer, tied its hands in the hiring or promotion of employees for certain jobs. The district court's opinion in the case quoted the arbitrator's ruling (apparently consented to by the parties) that he would not pass upon "the entire question of the breach of the decree and the extent to which the Company's action was [permissible] or required by the decree . . . ." *Telephone Workers Union Local 827* v. *New Jersey Bell Telephone Co.*, 450 F.Supp. 284, 291 (D.N.J. 1977). Consequently, there was no conclusion of law reached by the arbitrator on this issue, and the usual judicial review standards governing arbitration awards were, therefore, inapplicable.[3] In the present case, on the other hand, the *res judicata* issue was deliberately submitted to the arbitrators by UNC pursuant to the determination of a federal district judge "that the arbitration panel itself can entertain the questions of *res judicata* and full faith and credit" (Pet. App. 129a). Indeed, UNC told the arbitrators in a memorandum filed on January 15, 1979, that "the significance of" *Felter I* and *Felter II* was that "claims of *res judicata* (or full faith and credit, for that matter), must be pressed before the tribunal where the suit pends (which UNC

[3] In addition, the *Telephone Workers* case did not involve an arbitration covered by the Federal Arbitration Act. Arbitration was conducted under an arbitration clause in a collective bargaining agreement. Although comparable judicial review standards apply to such arbitrations (*see, e.g., United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960)), the specific provisions of 9 U.S.C. §§ 9-11 do not govern.

is doing with this panel) . . . ." The decision of the arbitrators on that issue is, therefore, subject to the standards of review of Sections 9-11 of the Federal Arbitration Act.

(3) *Does the Federal Arbitration Act permit the New Mexico courts to review a federal arbitration award issued in California after an arbitration held in California?* UNC claims that reversal by this Court of the decision of the California Court of Appeal "would merely be advisory" because the California court has stated that it would dismiss GAC's confirmation action on grounds of *forum non conveniens* (UNC Br. in Opp., p. 22). The California court's judgment was based entirely, however, on an erroneous premise regarding federal law—*i.e.*, that the courts of New Mexico, which the California court believed to be "the more suitable forums to determine these issues" (Pet. App. 2a), have jurisdiction under the Federal Arbitration Act to confirm or vacate the award which is the subject of this action.

UNC does not cite any provision of the Federal Arbitration Act which explicitly grants jurisdiction to the local courts of a State which has no contact of any kind with a federal arbitration to vacate an award which is the result of such an arbitration. The *only* power to vacate an award conferred by the Act is granted in Section 10, and that provision specifies that "the United States court in and for the district wherein the award was made may make an order vacating the award . . . ." UNC's claim that this is a limitation on federal courts only (UNC Br. in Opp., pp. 23-25) makes nonsense of the Congressional purpose. Under UNC's reading Congress would have been authorizing any State court in the nation to nullify the outcome of a federal arbitration while granting that power to only one federal district court.

The statutory limitation in Section 10 was obviously designed to streamline the process of reviewing arbitration awards by removing opportunities for forum-shopping and reducing the possibility of conflicting or inconsistent judicial decisions. Permitting the parties to an arbitration freely to select any State forum where personal jurisdiction could be secured would conflict directly with this policy. Consequently, the statutory limi-

tation to "the United States court in and for the district wherein the award was made" must apply not only to federal courts, but to State courts as well.[4]

(4) *Does the Supremacy Clause of the United States Constitution permit a State court to nullify a federal arbitration solely because of State-court judgments resulting directly from local court orders which have themselves been declared by this Court to be unconstitutional under the Supremacy Clause?* GAC's position rests on the most elementary principles of justice. The New Mexico courts have twice unconstitutionally, at UNC's request, prevented federal arbitration, and on each occasion it has taken many months to secure relief from this Court. The self-evident proposition that "no one may profit by his own wrong," *Beck* v. *West Coast Life Insurance Co.*, 38 Cal. 2d 643, 241 P.2d 544 (1952) (Traynor, J.), requires that UNC be denied any benefit as a result of the illegal orders it obtained.

Yet the California Court of Appeal has permitted UNC to exploit the illegal orders. It has refused even to allow the trial court to consider confirmation of the federal arbitration award solely because the New Mexico courts were able to utilize the period when federal arbitration was unconstitutionally stayed to enter judgments which appear, on their face, to preclude the arbitration. If that result is permitted, the decisions of this Court have become dead letters, and GAC's rights under the Supremacy Clause are totally meaningless.

UNC's response is a direct challenge to this Court's authority and to the supremacy of federal law. UNC says that it is "immaterial" if the California Court of Appeal violated this

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[4] *Bainbridge* v. *Merchants & Miners Co.*, 287 U.S. 278 (1932), is inapposite. In that case an employer who had been sued in a State court under the Jones Act argued that the then recently enacted federal statute deprived all State courts other than that of the employer's principal office of the coordinate jurisdiction they had always had to hear and determine seamen's damage claims. This Court rejected that argument on the ground that the statute—albeit cast in terms of "jurisdiction"—defines only the venue of federal courts. The same reasoning would not apply to the Federal Arbitration Act since the literal construction of Section 10 advocated by GAC does not withdraw from the State courts any well-established jurisdiction.

Court's rulings in *Felter I* and *Felter II* by giving conclusive effect to the New Mexico judgments because, under New Mexico's *res judicata* standards, the New Mexico decisions are final and binding (UNC Br. in Opp., p. 16). But UNC overlooks the fact that a final judgment of a State court which is made possible only because of an antecedent violation of the Supremacy Clause must itself be invalidated under the Supremacy Clause, irrespective of the local rules regarding *res judicata*. Otherwise parties in State-court proceedings would find it advantageous to obtain unconstitutional restraints against federal proceedings and then rush to judgment to foreclose the enjoined remedy which is guaranteed by federal law.

This is not a case in which a final judgment is challenged because subsequent developments indicate that it was based upon an error of law. This Court's recent decision in *Federated Department Stores, Inc.* v. *Moitie*, No. 79-1517, 49 U.S.L.W. 4687 (decided June 15, 1981), which UNC quotes (UNC Br. in Opp., pp. 16-17), reaffirmed the principle that the *res judicata* consequences of a final judgment are not affected by the fact that the judgment rested on a subsequently overruled legal doctrine. But that principle has no application to a judgment which results from a fundamental jurisdictional error. If a court improperly arrogates to itself exclusive jurisdiction over a controversy, the outcome of that jurisdictional excess cannot foreclose, on *res judicata* grounds, recourse to a proper forum which had been unconstitutionally barred.

The arbitration panel, chaired by former Justice Walter V. Schaefer, who is no stranger to difficult questions of jurisdiction and *res judicata*, viewed this situation as analogous to *Gordon* v. *Longest*, 41 U.S. (16 Pet.) 97 (1842), and *Sibley* v. *Tandy Corp.*, 543 F.2d 540 (5th Cir. 1976), *rehearing denied*, 547 F.2d 286 (1977), *cert. denied*, 434 U.S. 824 (1977), which treated judicial proceedings in these circumstances as nullities (Pet. App. 45a-47a). The arbitrators properly applied to this case the observation which this Court made in *Kalb* v. *Feuerstein*, 308 U.S. 433, 440 n. 12 (1940):

> That a state court before which a proceeding is competently initiated may—by operation of supreme federal

> law—lose jurisdiction to proceed to a judgment unassailable on collateral attack is not a concept unknown to our federal system.

When it unconstitutionally enjoined and stayed the federal arbitration to which GAC was entitled and refused to stay the Santa Fe trial, the Santa Fe court "lost jurisdiction to proceed to a judgment unassailable on collateral attack." When GAC was finally permitted to invoke the federal arbitration right which had been barred for more than two years, it was entitled, by reason of the Supremacy Clause and the effect of this Court's rulings, to be "restored" to the position it occupied as of April 2, 1976. Judgments entered while arbitration was illegally stayed by the Santa Fe court could not preclude the federal arbitration.

One final point warrants reply. In its Brief in Opposition to the Petition for a Writ of Certiorari as well as in its Opposition to the Petition for a Writ of Mandamus in No. 80-2107, UNC cites this Court's denials of certiorari in *General Atomic Co.* v. *United Nuclear Corp.*, No. 79-190, 444 U.S. 911 (1979), and in *General Atomic Co.* v. *United Nuclear Corp.*, No. 80-1360, 101 S.Ct. 1966 (1981). Those were unsuccessful applications to this Court by GAC to review the judgments which have now been invoked as bars to the arbitration under the doctrine of *res judicata* and full faith and credit. In both sets of pleadings, GAC expressed its concern that the challenged New Mexico judgments *might* be utilized to hinder or prevent the arbitration, but neither New Mexico case directly involved the validity of the arbitration award. In No. 79-190, the issue decided by the New Mexico court was whether a stay of the Santa Fe trial was correctly denied, and in No. 80-1360, the issue was whether the Santa Fe default judgment was valid. Even though both judgments were left undisturbed, the arbitration was entitled to proceed and the arbitrators were free to adopt and apply the legal principle they invoked—*i.e.*, that the Santa Fe judgments would not be accorded full faith and credit.

This case directly involves the validity and enforceability of the arbitration. The California Court of Appeal has done what GAC told this Court it feared some court might do—*i.e.*,

it has utilized the Santa Fe judgments, which were rendered on arbitrable issues while arbitration was illegally stayed, as a *res judicata* bar to any other consideration of GAC's rights under the Federal Arbitration Act. UNC's full-faith-and-credit issue was a question which was properly resolved by the arbitrators and should be determined, under statutory review standards, by a court in California. This Court's past denials of certiorari are not, therefore, inconsistent in any way with the granting of the present petition and a reversal of the judgment below.[5]

CONCLUSION

For the foregoing reasons, as well as those set forth in our Petition for a Writ of Certiorari, certiorari should be granted and the case consolidated for briefing and argument with No. 80-2107.

Respectfully submitted,

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[5] In addition, of course, this Court has frequently emphasized that no substantive significance whatever should be accorded to denials of certiorari. *E.g., Hughes Tool Co.* v. *Trans World Airlines*, 409 U.S. 363, 366 n. 1 (1973); *Maryland* v. *Baltimore Radio Show, Inc.*, 338 U.S. 912, 917-20 (1950) (Frankfurter, J.).